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FISH & RICHARDSON P.C.
225 FRANKLIN STREET
BOSTON, MA 02110-2804

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In re Application of :
Shih-Chieh Hung et al :
Serial No.: 09/761,893 : PETITION DECISION
Filed: January 17, 2001 :
Attorney Docket No.: 12862-002001 :

This is a decision on the petition filed May 27, 2003, under 37 CFR 1.181, requesting revival of the above identified application based on non-receipt of an Office action. The delay in acting on this petition is regretted.

BACKGROUND

A review of the file history shows that the examiner mailed a Final Office action to applicants on July 28, 2002, at the above address, and specifically addressed to "Eric L. Pahl". Applicants' copy of the Office action bearing a "Received" date stamp of Fish & Richardson, P.C., Boston Office" and dated August 1, 2002, was returned to the Office on August 13, 2002, accompanied by a letter signed by Y. Rocky Tsao. The reason for return given in the letter is that the Office action is for a different Serial Number and provides 09/781,693, as the Serial Number for their Docket Number 11709-003001. However, 11709-003001 is applicants' file reference number provided on the transmittal letter filed with this application. It is clear that applicants did receive the Office action in a timely manner, but that through administrative error believed that the action was for a different file. Prior to Office receipt of the returned Office action, applicants contacted the examiner requesting remailing of the correct Office action. The examiner remailed the Office action to the same address and restarted the period for reply on August 6, 2002. Appended to the Office copy of the remailed Office action is an examiner's note indicating that applicants reported receiving an Office action for the wrong case. Applicants claim and provide evidence that the remailed Office action was never received.

DISCUSSION

While it is regretted that applicants did not receive the remailed Office action (a copy has since been provided by facsimile transmission and a reply thereto has been provided) applicants did receive the originally mailed copy of the Office action and through mistake returned it to the Office on the belief that it was for a different case based on applicants assigning a new file reference number to their file. A review of the Office action, as originally received, should have

made it evident that the Office action was for the correct Serial Number, as identified on the Office action. Thus no error on the part of the Office occurred in the original mailing of the Office action. It is further noted that the returned Office action is identical to the one remailed to applicants. Thus the originally mailed Office action was proper and timely received by applicants. It is recognized that in rare instances an Office action has been improperly mailed to an incorrect address, however, this is not the fact situation here. In view of the facts of record, applicants' failure to properly reply to a properly received Office action must lie with applicants and withdrawal of abandonment is not appropriate under 37 CFR 1.181.

DECISION

Applicant's petition under 37 CFR 1.181 is **DENIED**. As a courtesy, applicants' amendment in reply to the Final Office action has been considered by the examiner as indicated on the attached Advisory Action. No Notice of Appeal has been filed.

The application remains abandoned for failure to timely reply to an outstanding Office action.

Applicants' request that this petition alternatively be considered under 37 CFR 1.137(b) is dismissed as informal as such petition must be presented in a separate paper. In order to be considered timely, such petition must be presented within TWO MONTHS of the mail date of this decision.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at (703)308-3824 or by facsimile transmission at (703) 305-7230.

John Doll 
Director, Technology Center 1600